

CONTRACT#: _____

CHARGE TO UNIVERSITY ACCOUNT# _____

CONTRACT AMOUNT \$ _____

TEXAS A&M UNIVERSITY-TEXARKANA PERFORMER AGREEMENT

THIS AGREEMENT is entered into between **TEXAS A&M UNIVERSITY-TEXARKANA** (“**A&M-TEXARKANA**”), a member of The Texas A&M University System, an agency of the State of Texas, and (“**PERFORMER**”), collectively referred to as “the Parties”, through _____ (“**AGENT**”) who warrants that he/she/it authorized to represent **PERFORMER** and legally bind **PERFORMER** to this Agreement.

I. ENGAGEMENT

PERFORMER will perform as follows:

Day/Date: _____ Time: _____

Location: _____ Rain Location: _____

Topic or Type of Performance:

Additional activities to be included in **PERFORMER’S** schedule:

II. OBLIGATIONS OF PERFORMER AND/OR AGENT

- 2.1 **PERFORMER** will be present at the location of the engagement at least _____ minutes in advance to complete technical arrangements and set-ups. All sound checks and rehearsals, if any, must be completed at least _____ minutes prior to the performance starting time.
- 2.2 **PERFORMER** or **AGENT** will/will not provide a press kit to **A&M-TEXARKANA**. If required by **PERFORMER** or **AGENT**, the press kit must be received by **A&M-TEXARKANA** two (2) weeks prior to the engagement.
- 2.3 If for any reason, except an act of natural phenomenon, illness, strike, riot, or other legitimate reason beyond his/her control, **PERFORMER** fails to complete the engagement as required herein, **PERFORMER** or **AGENT** will reimburse **A&M-TEXARKANA** for its actual expenses incurred immediately upon presentation of a statement of such expenses.
- 2.4 If **PERFORMER** arrives at the location of the engagement or performs under the influence of intoxicating beverages, narcotics, or drugs, **A&M-TEXARKANA** may cancel this Agreement with no liability on the part of **A&M-TEXARKANA**.
- 2.5 **PERFORMER** and **AGENT** warrant **PERFORMER** will not commit any slander or incite the listeners to an imminent threat of riot, civil disorder, or other illegal act. **PERFORMER** and **AGENT** agree to indemnify, defend and hold **A&M-TEXARKANA**, its System, its components, regents, officers, agents and employees, harmless from any claims, losses, suits, proceedings, damages or liabilities, including attorney’s fees, for property damage, personal injury, death, or any other cause of action that arises out of or is based, in whole or in part, upon any act or failure to act by **PERFORMER** or **AGENT** and/or their officers, agents, and employees in performing the Services under this Agreement. **PERFORMER** and **AGENT** will

reimburse **A&M-TEXARKANA** for any legal or other expenses incurred by University in connection with investigating or defending against such claims, losses, suits, proceedings, damages or liabilities, as and when such expenses are incurred. **A&M-TEXARKANA** reserves the right to settle any claim, proceeding, or suit at any time.

- 2.6 Any royalty fees, BMI, ASCAP, SECAC, AGVA, or union dues which may be required in addition to the compensation for artist's services agreed upon are the responsibility of **PERFORMER** or **AGENT**, not **A&M-TEXARKANA**.
- 2.7 **PERFORMER** and **AGENT** agree to abide by all **A&M-TEXARKANA**, local and state regulations, laws, ordinances, and policies, which may be applicable in the performance of meeting the conditions specified in the Agreement.
- 2.8 It is understood and agreed that **PERFORMER** will not solicit funds or contributions either directly or through the sale of materials unless prior written permission is obtained from **A&M-TEXARKANA** days prior to the performance.
- 2.9 It is specifically agreed that **PERFORMER** and **AGENT**, in fulfilling the terms and conditions of this Agreement, are acting as independent contractors and not as agents or employees of **A&M-TEXARKANA**.

III. OBLIGATIONS OF A&M-TEXARKANA

- 3.1 **A&M-TEXARKANA** will provide the facility and security, if necessary, for the engagement. Additional facilities and equipment to be provided: _____ (*NONE or description of additional facilities and equipment*)
- 3.2 **A&M-TEXARKANA** will publicize the engagement according to its own rules and procedures.
- 3.3 **A&M-TEXARKANA** may provide a photographer, and all negatives and prints will remain the property of **A&M-TEXARKANA** with the condition that they will not be used for commercial gain or any other purpose other than **A&M-TEXARKANA** promotional materials.
- 3.4 **A&M-TEXARKANA** may make a video record of the event. If the event is video recorded, all tapes shall remain the property of **A&M-TEXARKANA** with the condition that it will not be used for commercial gain or used by any other than **A&M-TEXARKANA**.
- 3.5 **A&M-TEXARKANA** will provide food, lodging and transportation as detailed below (if none, state "NONE"): _____ (*NONE or travel expenses detail*)
- 3.6 **A&M-TEXARKANA** is relieved of any liability if unable to meet the responsibilities of the Agreement because of any natural phenomenon, riots, epidemics, strikes, any act or order of public authority, or any other cause similar or dissimilar beyond the control of **A&M-TEXARKANA**. Furthermore, if such acts or conditions occur, **A&M-TEXARKANA** is not liable for any damage which the **PERFORMER**, his/her employees, or representative might suffer.
- 3.7 **A&M-TEXARKANA** shall be the only party authorized to issue complimentary tickets to the performances; however, upon request by **PERFORMER** or **AGENT** no later than _____ working days prior to the performance a maximum of _____ complimentary tickets shall be given to **PERFORMER** or **AGENT**.
- 3.8 **A&M-TEXARKANA** or **PERFORMER** can terminate this Agreement in writing at any time with thirty (30) days notice. **A&M-TEXARKANA** shall only be liable for payment of services and expenses incurred prior to termination.

IV. COMPENSATION

- 4.1 The total amount to be paid to **PERFORMER** under this Agreement shall not exceed:
- 4.2 The total amount of obligation of **A&M-TEXARKANA** will be limited to \$ _____ Paid to **PERFORMER** and \$ _____ paid for food, lodging and transportation.
- 4.3 **A&M-TEXARKANA** agrees to pay the **PERFORMER** by university check at the conclusion of the engagement provided **PERFORMER** or **AGENT** returns this Agreement within thirty (30) working days prior to the engagement. **A&M-TEXARKANA** agrees to expedite the check-writing process to meet this deadline. No deposits or advance payments can be made prior to the performance due to restrictions on the expenditure of **A&M-TEXARKANA** funds.

V. GENERAL PROVISIONS

- 5.1 The substantive laws of the State of Texas (and not its conflicts of law principles), USA, govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates. Pursuant to Section 85.18 (b), *Texas Education Code*, venue for a state court suit filed against **A&M-TEXARKANA**, or The Texas A&M University System, or any officer or employee of The Texas A&M University System is in the county in which the primary office of the chief executive officer of the system or component, as applicable, is located. At execution of this Agreement, such county is Bowie County, Texas. Venue for any suit brought against The Texas A&M University System in federal court must be in the Houston Division of the Southern District of Texas.
- 5.2 All applicable laws, regulations, and policies and procedures relative to conduct on **A&M-TEXARKANA** premises shall govern the services provided under this Agreement.
- 5.3 All contracts require the written approval of the President of **A&M-TEXARKANA** at least five (5) days prior to the performance.
- 5.4 For agreements between **A&M-TEXARKANA** and a corporation: **PERFORMER** certifies that upon the effective date of this Agreement, it is either (1) not delinquent in payment of State of Texas corporate franchise taxes, or (2) not subject to the payment of such taxes. **PERFORMER** agrees that any false statement with respect to franchise tax status shall be material breach hereof, and University shall be entitled to terminate this agreement upon written notice thereof to **PERFORMER**.
- 5.5 A child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five (25) percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. By executing this Agreement, **PERFORMER** certifies that the individual or business entity named in this Agreement is eligible to receive payment from the state and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate. (TEX.FAMILY CODE § 231.006)
- 5.6 This Agreement supersedes all prior agreements, written or oral, between **A&M-TEXARKANA** and **PERFORMER** and constitutes the entire Agreement and understanding between the Parties with respect to the subject matter hereof. The Agreement and each of its provisions will be binding upon the Parties and may not be waived, modified, amended or altered except by a writing signed by **A&M-TEXARKANA** and the **PERFORMER**.

- 5.7 Pursuant to Sections 2107.008 and 2252.903 of the Government Code, **PERFORMER** agrees that any payments owing to **PERFORMER** under this Agreement may be applied directly toward any debt or delinquency that **PERFORMER** owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full. "Debt or delinquency" means a debt, tax delinquency, student loan delinquency, or child support delinquency that results in a payment law prohibiting the comptroller from issuing a warrant or initiating an electronic funds transfer.
- 5.8 **PERFORMER** understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335 (c), *Texas Education Code*. **PERFORMER** agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. **PERFORMER** will include this provision in all contracts with permitted subcontractors.
- 5.9 This Agreement is not assignable without the express written agreement of both Parties. Notwithstanding any attempt to assign this Agreement, the **PERFORMER** shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants and conditions of this Agreement, unless an assignment is agreed to in writing by both Parties.
- 5.10 If a provision contained in this Agreement is held to be invalid, illegal, or unenforceable for any reason, it shall not affect any other provision of this Agreement. It is the intent of the Parties that if any provision is held to be invalid, illegal or unenforceable, there shall be added in lieu thereof a valid and enforceable provision as similar in terms to such provision as possible.
- 5.11 Performance by **A&M-TEXARKANA** under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds then **A&M-TEXARKANA** may terminate this Agreement without further duty or obligation hereunder. **PERFORMER** acknowledges that appropriation of funds is beyond the control of **A&M-TEXARKANA**.
- 5.12 Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. **A&M-TEXARKANA** and **PERFORMER** can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

A&M-TEXARKANA
 Office of the Vice President for Finance
 and Administration
 7101 University Avenue
 Texarkana, TX 75503
 Phone: (903) 223-3111
 Fax: (903) 334-6718

PERFORMER OR AGENT:
 Name:
 Address:
 City, ST & Zip:
 Phone:
 Fax:
 Tax ID# or SS#:

- 5.13 **PERFORMER** acknowledges that **A&M-TEXARKANA** is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement.
- 5.14 The representative of **A&M-TEXARKANA**, in signing this Agreement, signs it in a representative capacity and does not assume any personal liability for meeting the terms of the Agreement.

5.15 Notwithstanding any other provision in this Agreement to the contrary, there shall be no agreement between the Parties respecting this Agreement until this document is accepted and signed by all Parties listed below.

5.16 Dispute Resolution

(1) The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by **A&M-TEXARKANA** and **PERFORMER** to attempt to resolve any claim for breach of contract made by **PERFORMER**.

(A) A **PERFORMER** claim for breach of this contract that the Parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Government Code. To initiate the process, **PERFORMER** shall submit written notice, as required by subchapter B, to the President or his/her designee. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being revoked. A copy of the notice shall also be given to all other representatives of **A&M-TEXARKANA** and **PERFORMER** otherwise entitled to notice under the Parties' contract. Compliance by **PERFORMER** with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.

(B) The contested case process provided in Chapter 2260, subchapter C, of the Government Code is the contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by **A&M-TEXARKANA** if the Parties are unable to resolve their disputes under subparagraph (A) of this paragraph.

(C) Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by **A&M-TEXARKANA** nor any other conduct of any representative of **A&M-TEXARKANA** relating to the contract shall be considered a waiver of sovereign immunity to suit.

(2) The submission, processing and resolution of **PERFORMER's** claim is governed by the published rules adopted by the Attorney General of the State of Texas pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended. These rules are found at 1 T.A.C. Part 3 Chapter 68.

(3) Neither the occurrence of an event nor the pendency of a claim constitute grounds for the suspension of performance by **PERFORMER**, in whole or in part.

6.1 Public Information

(a) **PERFORMER** acknowledges that **A&M-TEXARKANA** is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

(b) Upon **A&M-TEXARKANA's** written request, **PERFORMER** will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of A&M System

(c) **PERFORMER** acknowledges **A&M-TEXARKANA** may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.

(d) The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this agreement and the **PERFORMER** agrees that the agreement can be terminated if the **PERFORMER** knowingly or intentionally fails to comply with a requirement of that subchapter.

(e) **Conflict of Interest.** By executing this Agreement, PROVIDER and each person signing on behalf of PROVIDER certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

(f) **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Texas Government Code, Chapter 2271 applies to this Agreement, Vendor/Contractor certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this Agreement. Vendor/Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

(g) **Certification Regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, PROVIDER certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. PROVIDER acknowledges this Agreement may be terminated if this certification is inaccurate.

(h) **Prohibition on Contracts Related to Persons Involved in Human Trafficking.** Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate

(i) **RECORDS RETENTION: PERFORMER** will preserve all contracting information, as defined under Texas Government Code, Section 552.003 (7), related to the Agreement for the duration of the Agreement and for seven years after the conclusion of the Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed intending thereby to be legally bound.

PERFORMER OR AGENT

TEXAS A&M UNIVERSITY-TEXARKANA

By: _____

Performer/Contractor Signatory

Date Signed: _____

Recommend Approval:

By: _____

**Tammy Graham
Executive Assistant for the Vice President
For Finance & Administration**

Date Signed: _____

Approvals:

By: _____

**Kathy Williams
Vice President of Enrollment Services
(If applicable)**

Date Signed: _____

By: _____

**Dr. David Yells
Vice President for Academic Affairs
(If applicable)**

Date Signed: _____

By: _____

**Jeff Hinton
Vice President for Finance & Administration**

Date Signed: _____

By: _____

**Dr. Emily F. Cutrer
President and CEO
(If applicable)**

Date Signed: _____